

## REMARKS

In the Office Communication of May 6, 2005, the Examiner states that the “election with traverse of all inventions filed on 01/07/05 is [an] improper response.” However, in the response submitted on 01/07/05, Applicant did not elect “all inventions” as incorrectly asserted by the Examiner. Instead, Applicant’s response clearly stated: “In response to the Examiner’s restriction requirement under 35 U.S.C. § 121, Applicants elect **with traverse** the alleged species defined by the Examiner as ‘structuring message transport system ... such as set up messaging transport stream through multi nodes, including firewall, broker, web site and proxy server.’” Thus, Applicant’s previous response clearly states an election (with traverse) of a single one of the alleged species defined by the Examiner, namely the alleged species that the Examiner himself defined in the Office Action of December 10, 2004 as “structuring message transport system ... such as set up messaging transport stream through multi nodes, including firewall, broker, web site and proxy server.” Therefore, Applicant’s previous response clearly elected a single alleged species with traverse using the Examiner’s own definition of the alleged species. Thus, Applicant’s previous response was a proper response to the restriction requirement.

To further clarify, Applicant elects **with traverse** the alleged species referred to by the Examiner as “group I” and defined by the Examiner as “structuring message transport system ... such as set up messaging transport stream through multi nodes, including firewall, broker, web site and proxy server.” However, Applicant does not agree with the Examiner’s grouping of the claims. Applicant maintains his assertion that pending claims 1-87 are all either generic to or read upon the elected alleged species. This statement is not inconsistent with Applicant’s election of the single alleged species defined above. As stated in M.P.E.P. § 806.04(e): “*Claims are never species.*” In other words, it is the specific embodiment described in the specification that defines a species, not the claims. The Examiner cannot define a species by the claims. Instead, the Examiner must define the species by referring to particular description in Applicant’s specification. See M.P.E.P. § 809.02(a). The Applicant is not required to follow the

Examiner's grouping of the claims. M.P.E.P. § 809.02(a) only requires the Applicant to elect a single species and list all claims readable thereon. Applicant has clearly meet both of these requirements by electing a single one of the alleged species as defined by the Examiner ("structuring message transport system ...") and by listing all of the claims that Applicant believes to be readable thereon (claims 1-87). As explained in Applicant's previous response, the elected alleged species as defined by the Examiner does not exclude and of the features recited in any of claims 1-87. Therefore, claims 1-87 clearly read on and/or are generic to the alleged species as defined by the Examiner.

Applicant also maintains his traversal of the restriction requirement. The Examiner's restriction requirement is improper because the alleged species as defined by the Examiner are not disclosed as actual species in the present application. **By definition, species must have mutually exclusive characteristics.** According to M.P.E.P. § 806.04(f):

The general test as to when claims are restricted, respectively, to different species is the fact that one claim recites limitations which under the disclosure are found in a first species but not in a second, while a second claim recites limitations disclosed only for the second species and not the first. This is frequently expressed by saying that claims to be restricted to different species must recite the mutually exclusive characteristics of such species. (emphasis added).

Note that "mutually exclusive characteristics" is a requirement of the species as described in the disclosure. "Mutually exclusive characteristics" does not mean that one claim recites a limitation not expressly recited in another claim.

The three alleged species as defined by the Examiner are not described in the specification as having mutually exclusive characteristics. For example, as described in the specification, packets may be sent through multiple nodes including, e.g., a proxy or firewall (alleged Species I) and may also include sequence information (alleged Species II) and may also be buffered on one of the nodes (alleged Species III). It is clear from even a cursory reading of Applicant's disclosure that these features are not mutually exclusive. For instance, Applicant's disclosure clearly does not require that if a packet is sent through a firewall it cannot include sequence information. Thus, the alleged species

as defined by the Examiner do not have mutually exclusive characteristics under Applicant's disclosure and cannot be a proper basis for restriction. Withdrawal of the restriction requirement is respectfully requested.

Claims 1-87 remain pending in the present application. Reconsideration and further examination of claims 1-87 is respectfully requested in light of the above remarks.

## CONCLUSION

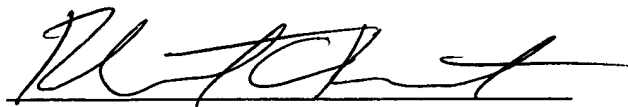
Applicant submits the application is in condition for allowance, and early notice to that effect is respectfully requested.

If any extension of time (under 37 C.F.R. § 1.136) is necessary to prevent the above referenced application from becoming abandoned, Applicant hereby petitions for such extension. If any fees are due, the Commissioner is authorized to charge said fees to Meyertons, Hood, Kivlin, Kowert, & Goetzel, P.C. Deposit Account No. 501505/5181-91600/RCK.

Also enclosed herewith are the following items:

- ☒ Return Receipt Postcard
- ☐ Petition for Extension of Time
- ☐ Notice of Change of Address
- ☐ Fee Authorization Form authorizing a deposit account debit in the amount of \$  
for fees (        ).
- ☐ Other:

Respectfully submitted,



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Date: June 6, 2005